

# 9-115.000

## USE AND DISPOSITION OF SEIZED AND FORFEITED PROPERTY

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### 9-115.100 Role of the United States Marshals Service

The United States Marshals Service shall have primary authority over the management and disposal of seized assets in its custody that are subject to forfeiture or are forfeited. Arrangements for property services or commitments pertaining to the management and disposition of such property are the responsibility of the Marshals Service.

Prior to taking any action (e.g., in a settlement or plea agreement) concerning the management or disposition of property, the United States Attorney or agent in charge of the field office responsible for an administrative forfeiture case should consult with the United States Marshals Service or other custodial agency. Such discussions shall address the impact that such proposed action may have on the United States Marshals Service or other custodial agency in undertaking, continuing, or terminating custody of the property. If the interests of claimants are to be satisfied in whole or in part by payments from the proceeds of a sale of the property by the Marshals Service or other custodial agency, the proposed forfeiture order should provide specific guidance for the Marshals Service or other custodial agency concerning such payments.

## **9-115.200 Use of Seized Property by Department of Justice Personnel**

Property under seizure and pending forfeiture shall not be utilized for any reason by Department personnel, including for official use, until such time as the final decree or court order of forfeiture is issued.

Likewise, Department personnel shall not make such property available for use by others, including person(s) acting in the capacity of a substitute custodian, for any purpose prior to completion of the forfeiture. However, exceptions may be granted by the U.S. Marshals Service in situations such as the seizure of a ranch or business where use of equipment under seizure is necessary to maintain the ranch or business. *See* the Criminal Resource Manual at 2248.

## **9-115.202 Use of Seized Property Where Custody is Retained by the State or Local Seizing Agency**

To minimize storage and management costs incurred by the Department of Justice, state and local agencies which present motor vehicles for federal adoptions should generally be asked to serve as substitute custodians of the property pending forfeiture.

Any use of such vehicles, including official use, by state and local law enforcement officials or others is prohibited by Department of Justice policy until such time as the forfeiture is completed and the equitable transfer is made. *See* the Criminal Resource Manual at 2248.

## **9-115.203 Use of Seized Real Property by Occupants**

As a general rule, occupants of real property seized for forfeiture should be permitted to remain in the property pursuant to an occupancy agreement pending the forfeiture. *See* the Criminal Resource Manual at 2249.

## **9-115.300 Disposition of Forfeited Property**

The disposition of property forfeited to the United States is an executive branch decision and not a matter for the court. Consequently, orders of forfeiture should be drafted broadly to direct forfeiture of the property to the United States "for disposition in accordance with law." It is also unnecessary to have the court confirm the manner and conditions of sale of forfeited property except in certain civil settlements. In the usual case, the United States Marshals Service is to determine the best method and conditions of sale of forfeited property in its custody.

## **9-115.310 Disposition of Forfeited Property Pursuant to 21 U.S.C § 881(e), 21 U.S.C. § 853(h), and 18 U.S.C. § 1963(f) and (g).**

It is the policy of the Department of Justice that the Attorney General has been given the authority under 21 U.S.C. § 881(e), 21 U.S.C. § 853(h) and 18 U.S.C. § 1963(f) and (g) to dispose of forfeited property "by sale or any other commercially feasible means," without subsequent court approval. This is generally called a "forfeiture sale" of the property. Forfeiture sales do not require judicial confirmation pursuant to 28 U.S.C. § 2001. However, if before forfeiture an interlocutory sale is necessary because the property is declining in value, then the procedures contained in 28 U.S.C. § 2001 should be followed requiring judicial confirmation of such interlocutory sales. When property is sold in this manner, it is called a "judicial sale."

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**Further information on this topic is available in the Criminal Resource Manual**

Disposition of Forfeited Property Pursuant to 21 U.S.C § 881(e),

Criminal Resource Manual at 2250

21 U.S.C. § 853(h), and 18 U.S.C. § 1963(f) and (g)

Forfeiture Sale Defined	Criminal Resource Manual at 2251
Statutory Authority for Forfeiture Sale	Criminal Resource Manual at 2252
Legislative History Supporting Forfeiture Sale	Criminal Resource Manual at 2253
Caselaw Supporting Forfeiture Sale	Criminal Resource Manual at 2254
Judicial Sale Defined	Criminal Resource Manual at 2255
Distinction of Interlocutory Sales	Criminal Resource Manual at 2256

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## **9-115.400 Attorney General's Authority to Warrant Title**

The preferred deed to transfer forfeited property is a U.S. Marshal's quitclaim deed (USM-159A) executed by the marshal. The quitclaim deed makes no warranty representations. It serves only to convey whatever right, title and interest that the Government had as of the execution date.

A special warranty deed may be used instead when the marshal, in consultation with the United States Attorney, concludes that such a deed is necessary and appropriate under the facts of a particular case, as described in the Criminal Resource Manual at 2258. The special warranty deed assures the grantee/buyer that the United States, as the current seller, has done nothing to encumber the property, nor has it conveyed any right, title, or interest in the property while the government was the owner of the property. In effect, the special warranty deed warrants the forfeiture process. *See* the Criminal Resource Manual at 2259.

Finally, property may be transferred by a general warranty deed. A general warranty deed assures the grantee/buyer that title to the property is free and clear of any and all liens and encumbrances, and insures the grantee/buyer from any future claims against the property. *See* the Criminal Resource Manual at 2260. It is Department policy to use general warranty deeds only in exceptional circumstances. *See* the Criminal Resource Manual at 2258. As used in this policy, the terms "general warranty deed" and "special warranty deed" are not intended to be limiting in their application. In some states, warranty deeds are not used (e.g., in California a "grant deed" provides limited statutory warranties). The use of such state variations equivalent to a general warranty deed is satisfactory for purposes of this policy. *See* the Criminal Resource Manual at 2257.

## **9-115.412 Indemnification Agreement in Addition to Special Warranty Deed**

When the circumstances for use of a special warranty deed exist, the buyer may also request that the United States provide certain indemnifications in order to obtain title insurance. These indemnification agreements establish affirmative measures to be taken by the United States, beyond the basic terms and obligations of its warranty deed, in the event that claims are later made against the property. The indemnification agreement may be included either in the terms of the special warranty deed or in a separate document which incorporates the deed by reference. In either form, indemnification agreements will be limited to the following terms:

- The United States will specially warrant its title against defects or clouds arising out of the forfeiture process, and hold the buyer harmless as a result of such defects in title or clouds involving the propriety of the forfeiture of the property.
- In the event that a court in a final judgment rules that the United States did not acquire valid legal title to the real property through the forfeiture process and therefore was not able to convey clear title to the buyer, the United States will refund to the buyer the amount of the purchase price of the property, plus the value of any improvements made to the property by the buyer. The amount will be paid out of the Assets

Forfeiture Fund, plus interest on the total amount at the current rate as provided in 28 U.S.C. § 1961 from the date of the purchase of the property by the buyer to the date of the final judgment.

- The United States, by its special warranty deed, does not warrant the title of the prior owner of the property who acquired title before the forfeiture.

### **9-115.413 Approval for Use of a Special Warranty Deed with Indemnification**

Requests to the Seized Assets Division of the U.S. Marshals Service for approval to convey title through a special warranty deed with indemnification must be accompanied by the following:

- An explanation of the special circumstances which justify the indemnification;
- A proposed indemnification agreement, whether in a separate agreement or as additional paragraphs in a special warranty deed; and
- A statement of the amount of the purchase price which potentially may have to be refunded.

### **9-115.420 General Warranty Deed**

If the buyer of the forfeited property is unable to procure a title insurance policy with a special warranty deed and indemnification agreement, then the Marshal may be authorized by a Significant Property Decision to execute a general warranty deed.

It is the policy of the Department that the Attorney General's discretion to warrant clear title, through the use of a general warranty deed, will be exercised only in compelling circumstances where the financial advantage of offering a general warranty deed in the particular case, compared to the available alternatives, far outweighs both the potential cost of honoring the warranty in that case and the potential effect of increased purchaser demand for general warranty deeds in future sales of other forfeited properties. The Seized Asset Division of the U.S. Marshals Service, in the exercise of sound business judgment, shall also consider the cumulative potential liability which will accrue over time as a result of each successive use of a general warranty deed.

### **9-115.421 Approval for Use of a General Warranty Deed**

If one or more of the circumstances listed in the Criminal Resource Manual at 2258 is present, and the Marshal and the United States Attorney responsible for the forfeiture action deem it appropriate to warrant clear title, the Marshal and the United States Attorney shall request approval from the Seized Assets Division to convey title through a general warranty deed or its equivalent.

Requests to the Seized Assets Division of the U.S. Marshals Service for approval to convey title through a general warranty deed or its equivalent shall include the following:

- A title report, identifying specific deficiencies and/or exceptions that are the basis of the inability to secure title insurance, and a written explanation from the responsible Assistant United States Attorney addressing why the deficiencies and/or exceptions have not been or cannot be corrected in order to avoid the necessity of a general warranty deed;
- An explanation establishing that a special warranty deed (e.g., warranting only the forfeiture process) would not be sufficient;
- A statement of, and an explanation of the basis for, the estimated financial advantage of offering a general warranty deed as compared to other options; and

- An explanation of the circumstances that do not permit disposition of the property by allowing the lienholder to foreclose, sell the property, recover the amount of the lien plus interest and expenses from the proceeds of the sale, and pay to the Marshal for forfeiture, any remaining proceeds in return for the release of the liens on the property.

### **9-115.430 Dispute Resolution**

The Asset Forfeiture and Money Laundering Section (AFMLS) will resolve any disputes that may arise in the event the United States Attorney and the U.S. Marshal cannot agree on the appropriate form of deed to be used.

### **9-115.500 Purchase or Personal Use of Forfeited Property by Department Employees**

Title 28, C.F.R., §§ 45.735-18(a) and (b) prohibit Department of Justice employees from purchasing, either directly or indirectly, or using any property if the property has been forfeited to the government and offered for sale by the Department or its agents. *See* the Criminal Resource Manual at 2261 A waiver to the aforementioned restrictions may be granted by the head of the employee's division upon a determination that two requirements are satisfied:

- the purchase was not based on nonpublic information that came to the employee's attention by reason of his status as a Department of Justice employee, i.e., that the purchase was based upon nonpublic source information; and
- the employee's reason for purchasing or using the property is so compelling as to outweigh any appearance of impropriety. *See* Title 28, C.F.R., sections 45.735-18(c)(1) and (2).

### **9-115.600 Review of Official Use of Forfeited Property Valued at over \$50,000**

Part IV, D of *The Attorney General's Guidelines on Seized and Forfeited Property* (July 1990) (USAM 9-118.000 et seq.) requires notification to the "Executive Office for Asset Forfeiture . . . at the time property valued at \$50,000 or greater is placed into official use." Although this requirement may be satisfied by post-transfer notification, the FBI and U.S. Marshals Service provided the then Executive Office for Asset Forfeiture with advance notice of and an opportunity to review such decisions. Such notification should now be made to the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division.

Please ensure that AFMLS is given advance notice of and an opportunity to review official use actions involving federal forfeited property valued at \$50,000 or more. AFMLS will endeavor to act on all such notifications within two weeks of receipt.